

General Information Letter. No withholding or information reporting required for qualified retirement plan payments.

September 11, 1998

Dear:

This is in response to your letter of September 4, 1998 in which you request that we complete your annual survey. Department rules require that the Department issue two types of rulings, private letter rulings and general information letters. The Department has adopted rules concerning letter rulings and other information issued by the Department (2 Ill. Adm. Code 1200). We would be happy to send you a copy of those rules at your request.

Although you have not requested either type of ruling on behalf of your company, the nature of your questions and the information you provided necessitates that we respond in the form of general information letter. General information letters are designed to provide background information on specific topics. However, general information letters are not rulings that are binding on the Department.

We have reviewed your survey. Your questions and the Department's answers are reproduced below.

#### **Reporting on Retirement Plan Payments**

Question 1. Reporting on employer-sponsored retirement plan payments can be described as follows:

**Response:** Illinois does not require reporting on information returns.

Questions 2 through 10 are inapplicable given our response to question #1.

#### **Withholding From Retirement Plan Payments**

Question 1. Does your state allow withholding from retirement plan payments?

**Response:** Withholding is not required for most retirement plans. However, the payor and the payee may agree to voluntarily have Illinois income taxes withheld from retirement payments.

An individual's Illinois net income subject to Illinois income taxation is that individual's base income as modified. *Illinois Income Tax Act [IITA] Section 202*. An individual's base income is that individual's federal adjusted gross income subject to certain statutory addition and subtraction modifications. *IITA Section 203*. One of the subtraction modifications provided is *IITA Section 203(a)(2)(F)* which states:

An amount equal to all amounts included in such total pursuant to the provisions of Sections 402(a), 402(c), 403(a), 403(b), 406(a), 407(a) and 408 of the Internal Revenue Code, or included in such total as distributions under the provisions of any retirement or disability plan for employees of any governmental agency or unit, or retirement payments to retired partners, which payments are

excluded in computing net earnings from self employment by Section 1402 of the Internal Revenue Code and regulations adopted pursuant thereto.

Therefore, amounts of income which an individual receives as distributions from a federally tax-qualified plan will not be subject to Illinois income taxation. Since the amounts escape Illinois income taxation, the *IITA* imposes no obligation on employers to withhold tax from either contributions or distributions.

Conversely, amounts included in an individual's federal adjusted gross income, as distributions from a retirement plan that is not tax-qualified under the Internal Revenue Code, are subject to Illinois income taxation. Those amounts are subject to Illinois withholding if they are also subject to federal withholding. *IITA* Section 701(a). The formula for computing the correct amount to withhold is set forth in *IITA* Section 701(a)(2).

86 Ill. Admin. Code Section 100.7070 provides for voluntary withholding from otherwise exempt payments. Copies of Sections 100.7070 and 100.7060, which contain details on the form voluntary withholding agreements must take, are enclosed

Questions 2 through 9 have been answered by the response to Question 1.

We hope that our answers were sufficiently responsive to your inquiries.

Very truly yours,

Jackson E. Donley  
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